

STATE OF ARIZONA
DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
DIVISION OF MILITARY AFFAIRS

DEMA DIRECTIVE 25.4

15 May 1998

Military Technician Personnel
ALTERNATIVE DISPUTE RESOLUTION PROGRAM

Alternative Dispute Resolution
Mediation

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Distribution:
A, B, C.

1. **Purpose and Scope:** This Directive sets forth the policy of the Adjutant General concerning the use of alternative dispute resolution processes. To use Alternative Dispute Resolution (ADR) Mediation to promote principles and practices that will contribute to an improved working relationship. The program relates to the mediation process in solving adversarial situations, by creative solutions designed by the parties themselves. Its purpose is to provide assistance to supervisors, managers and employees in solving workplace problems by themselves. This process will demonstrate a commitment to a positive approach and joint ownership of concerns and solutions. It is intended to resolve disputes quickly and informally.

2. **Background:**

(a) Alternative Dispute Resolution, often referred to simply as ADR, is an umbrella phrase used to describe a variety of problem-solving methods or techniques. ADR methods include, among others, negotiation, mediation, settlement conferences, early neutral evaluation, dispute resolution panel, mini-trials, arbitration, and litigation. The current restraints on Federal spending require us to use the resources we have more effectively and more efficiently. We must explore new approaches to addressing the issues which confront us daily if we are to continue to be effective advocates and fully carry out our responsibilities as members of the Arizona National Guard. ADR is one important step that can be taken to resolve disputes before they reach the formal adversarial stage such as grievances, discrimination complaints and litigation.

(b) The importance of employing techniques other than litigation or other formal adjudicatory processes to address conflict between or among individuals has been recognized by both the Congress and the President. The Administrative Dispute Resolution Act of 1996, Public Law 104-320, reinforces Congress' interest in and recognition of the potential benefits of ADR techniques. Building upon and improving the Alternative Dispute Resolution Act of 1990, Public Law 101-522, as amended by Public Law 102-354, the 1996 Act made permanent the many innovations established by the earlier Act. It broadened the scope of the activities covered, enhanced the confidentiality provisions, provided greater incentives to use binding arbitration as a dispute resolution technique, and made it easier for Federal agencies to procure the services of neutral parties.

(c) In February 1996, President Clinton issued Executive Order 12988, "Civil Justice Reform." Among other things, the Order directs that:

"Whenever feasible, claims should be resolved through informal discussions, negotiations, and settlement rather than through utilization of any formal court proceeding. Where the benefits of Alternative Dispute Resolution (ADR) may be derived, and after consultation with the agency referring the matter, litigation counsel should suggest the use of an appropriate ADR technique to the parties."

3. Responsibility:

(a) Program Manager will;

- (1) Be the HRO, Labor Relation Specialist.**
- (2) Ensure that the Program Mediators receive adequate training and guidance to carry out their duties.**
- (3) Provide program analysis to the HRO/Adjutant General on the success of the program.**

(b) Program Mediators will;

- (1) Make a record of the fact that the mediation took place, indicate the date, time spent, the participants involved, whether a resolution was reached, and forward record to the HRO, Labor Relations Specialist. This record will not contain any information about the matters discussed during the mediation.**
- (2) Explain agreement for mediation form (appendix 1) to clients.**
- (3) Explain ground rules for mediation form (appendix 2) to clients.**
- (4) Complete a settlement agreement form (appendix 3) if one is reached, for clients.**
- (5) Have client's complete survey form (appendix 4) and return to the HRO.**
- (6) Complete mediators survey form (appendix 5) and return to the HRO.**
- (7) Attend training in basic ADR Mediation.**
- (8) Ensure that mediators stay current in the mediation process by conducting mediation sessions frequently and obtain refresher training when provided.**
- (7) Attend ADR networking sessions when available.**

(c) Supervisors will;

- (1) Every supervisor must consider utilizing ADR mediation techniques with every controversy or dispute involving two or more individuals.**
- (2) If you decide to use the ADR mediation technique, contact the HRO, ADR Program Manager, Labor Relations Specialist, 602-267-2792 or DSN 853-2792.**

(3) In analyzing whether a dispute is appropriate, some general considerations should be kept in mind.

Mediation **may** be a preferred option when:

- The section would benefit from a quick resolution of the issues.
- This is a case where setting precedent is not the objective or where the legal issues are of minimal significance.
- Emotions may be diffused if a neutral mediator becomes involved.
- Your chances of winning at a trial are less than you would like.
- The costs of preparing for trial are substantial relative to anticipated recovery.
- There is a factual dispute based on the credibility of witnesses.
- The case is going to become a battle of the experts.
- Opposing counsel is contentious, incompetent or difficult.
- Opposing counsel is an obstacle to resolution.
- The potential for negative publicity outweighs the potential benefits of winning.
- If you do win this case, an appeal is likely.

Some Advantages of Mediation:

- If you lose this case, you will be liable for the other side's attorney's fees.
- If you do win this case, you will work in the same place.
- Encourages people to resolve their own differences.
- A third party does not impose a solution.
- Mediation is future focused.
- It repairs or improves relationships damaged by conflict.
- Mediation is fast.
- Less expensive than arbitration or litigation.
- Tends to find solutions not find winners or losers.

Mediation **may not** be a preferred option when:

- There is a public policy issue which must be settled.
- The law is not well established and a legal precedent is desired.
- The parties involved in the dispute may not be similarly situated, e.g., one party to the dispute may be easily intimidated by the other party to the dispute.
- There is no incentive for one party to the dispute to seek to expeditiously resolve the dispute.
- Dealing with Technician performance appraisals.

4. Participation in Mediation

- Dispute resolution is everyone's responsibility. Festered disputes are time consuming and can result in alienation, stress, reduced productivity, loss of quality, ruptured relationships and in some cases, even violence.
- Alternative Dispute Resolution or mediation is an informal way employees can resolve disputes with fellow employees, managers, or colleagues through a mediator. The dispute is resolved in a private, confidential and timely manner. The mediator is not authorized to make a decision, or force one on any party in the dispute. The mediator's role is: (1) to facilitate a resolution of the dispute; and (2) to work with all parties to reach a voluntary settlement which is satisfactory to all parties.
- The mediator begins with a joint session with all parties in the dispute. At the initial meeting, the mediator fully explains how the mediation process works and will answer any questions the parties may have. Each party will have a chance to tell his or her side of the dispute, the mediator will ask specific questions to define or clarify issues. At the conclusion of the first joint session, the mediator will caucus separately with each party to discuss the issues in greater detail and gain a better sense of how the parties would like the issue resolved.
- The mediation process may then continue with a series of separate meetings, or the mediator may decide to continue meeting with the parties jointly. During these joint and/or private meetings, the mediator will explore with the parties various options for resolving the dispute. The mediator can act in any number of roles, i.e. communicator, translator, agent of reality, etc.
- The mediator is bound by confidentiality and must not reveal the substance of any private discussions without express permission from the parties in the dispute. The mediator's notes are property of the mediator and should be destroyed. The mediator cannot be called as a witness in a court of law.
- In an employee - management dispute, only the mediator, the employee with the dispute and a deciding management official, one with the authority to enter into a binding resolution agreement, not necessarily the employee's immediate supervisor should be present at the mediation session. Employees may wish to have a representative present and the management official may wish to have a technical advisor present. But it is the employee and the management official who must resolve the dispute.
- Neither party gives up his or her rights to pursue the dispute formally thru EEO channels, Union grievance, and State Grievance channels. The parties can stop the mediation process at any time.

- The mediator will assist in crafting a written verbal agreement between the parties when the mediated solution is reached.
- Technician EEO complaints will use the settlement agreement format in NGR (AR) 690-600/NGR (AF) 40-1614, Volume II, all other disputes may use appendix 3.

5. Definitions

(a) Mediation - Is a voluntary and informal process in which the disputing parties select a neutral third party to assist them in reaching a settlement. The Mediator has no power to impose a solution on the parties but rather provides facilitation in reaching an agreement acceptable to the parties.

(b) Alternative - A proposition or situation offering a choice between two or more things only one of which may be chosen.

(c) Dispute - To engage in argument, to argue or debate a controversy or conflict.

(d) Resolution - The act or process of reducing to simpler form.

(e) Conflict - A competitive or opposing action of incompatibles. A mental struggle resulting from incompatible or opposing needs, drives, wishes or external or internal demands.

(f) Caucus - A closed meeting of a group of persons. This is a confidential meeting and is used to provide the parties an opportunity to talk to the mediator about something they are not yet ready to share with the other party.

(g) Consensus - A consensus is an agreement each party can accept, not necessarily support on every issue. It is not a majority rule decided decision.

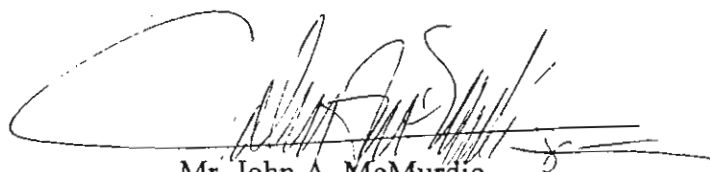
6. All previously issued letters and/or orders in conflict with the above are hereby rescinded.

The proponent agency of this regulation is the Human Resources Office. Users are invited to send comments and suggested improvements to the Office of the Adjutant General, 5636 E. McDowell Rd., Phoenix, AZ 85008-3495 Attn: AZAA-HRL

BY ORDER OF THE GOVERNOR

//////SIGNED//////

GLEN VAN DYKE, Major General, AZ ANG
The Adjutant General



Mr. John A. McMurdie
Resource Manager

Agreement for Mediation

I have received a copy of the Arizona National Guard Mediation Program brochure and understand the mediation process and procedures. Specifically, I understand that:

1. Mediation is a voluntary process and the mediator is a neutral party and has no authority to act as a judge or to impose any sort of solution on the parties in the dispute.
2. Mediation is a confidential process and that any documents or statements made during the mediation process are for settlement purposes only. I agree not to subpoena or request the mediator to serve as a witness in any other proceeding. (Within the law)
3. No party shall be bound by anything said or done at the mediation, unless a written settlement agreement is reached and executed by all necessary parties. If a settlement is reached, the agreement shall be reduced to writing by the mediator and, when signed and approved by the appropriate authorities for all the parties, the settlement document shall be legally binding upon all parties to the agreement.
4. In electing to use mediation, the aggrieved person (complainant) agrees to a 60 - calendar day extension to the EEO counseling period.
5. In the event mediation is terminated for any reason, the aggrieved person (complainant) may continue to pursue an informal resolution of the matter.
6. If the aggrieved person has any questions regarding this process, he or she may contact the EEO Counselor, the mediator, or the Mediator Program Manager. HRO EEO Manager LTC Tom Troxell, DSN: 853-2786, Comm: 602-267-2786 or HRO Labor Relations Specialist, CMS Dan Cochran, DSN: 853-2792, Comm: 602-267-2792.

By signature below, I acknowledge that I have read, understand and, agree to participate in mediation:

(Name, Unit, and Telephone Number)

(Signature)

(Date)

Appendix 1

GROUND RULES FOR MEDIATION

1. We agree to act respectfully toward each other, and if we feel we are not being treated respectfully, we will immediately notify the mediator of our concerns. (No physical violence, name calling, or interruptions).
2. We will utilize this time productively.
3. We will focus on the future.
4. We understand and agree that this is a confidential meeting, and we are able to talk honestly and openly during our mediation.
5. We understand that the mediator is a neutral party who will facilitate all portions of our mediation, but will not make a decision.
6. We agree that we are the decision makers and we are responsible for creating the actual terms of the agreement.
7. We will immediately notify the mediator if we are uncomfortable with an exercise or the progression of the mediation; need a break; or are considering terminating our participation in the mediation session for any reason.

Alternative Dispute Resolution (ADR) Settlement Agreement

This settlement is entered into voluntarily, and in exchange for those things set forth below, the undersigned parties to this agreement resolve to settle any and all formal and informal complaints or union grievances concerning this issue(s)

Section 1. Client agrees to:

a.

b.

c.

d.

Section 2. Client agrees to:

a.

b.

c.

d.

Appendix 3

Section 3. Both clients also stipulate that:

- a. This agreement will be a legally binding and enforceable settlement contract and neither party can change their minds at a later date.
- b. This agreement has been entered into freely by both parties; this agreement does not constitute an admission of guilt, fault or wrongdoing by either party; this agreement shall be kept confidential and the terms herein shall not be disclosed by either party, except to authorized officials or other officials responsible for implementing the agreement; this agreement shall not serve as a precedent for resolving any other complaints, which have been or may be filed by the complainant or any other person; and, this agreement constitutes the entire agreement and there are no other terms to this agreement except those specified herein.

In witness whereof, the parties to this agreement have affixed their signature.

Dated this _____ day of _____, 1998.

Deciding Management Official _____

Employee/Union Representative _____

Mediator _____

Client's Survey

This form is to be completed by the client at the conclusion of the mediation, and returned to the HRO.

Name of Mediator: _____

Employee Name: _____(Optional)

Name of Management Official: _____

Date of Mediation conference: _____

Length of Mediation, in hours: _____

Outcome: Settled ____: Not Settled ____: Continued: _____

Please explain, from your point of view, why this case did or did not settle:

In your opinion, was mediation appropriate for this case? Please elaborate:

What problems did you encounter with this mediation:

Do you have any other comments?

Appendix 4

Mediator's Survey

This form is to be completed by the mediator at the conclusion of the mediation, and returned to the HRO.

Name of Mediator: _____

Employee Name: _____

Name of Management Official: _____

Date of Mediation conference: _____

Length of Mediation, in hours: _____

Outcome: Settled ____: Not Settled ____: Continued: _____

Please explain, from your point of view, why this case did or did not settle:

In your opinion, was mediation appropriate for this case? Please elaborate:

What problems did you encounter with this mediation:

Do you have any other comments?